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No. 81-1859

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

PEOPLE OF THE STATE OF ILLINOIS,

Petitioner,

v.

RALPH LAFAYETTE,

Respondent.

On Writ Of Certiorari To The Appellate Court
Of Illinois, Third Judicial District

JOINT APPENDIX

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CERTIORARI GRANTED NOVEMBER 8, 1982

TABLE OF CONTENTS

	Page
Chronological List Of Relevant Docket Entries	1
Bill Of Indictment filed September 15, 1980	2
Order Of Trial Court entered November 21, 1980 .	3
Motion To Quash And Suppress Evidence Unconstitutionally Seized, filed December 29, 1980	4
Order Of Trial Court entered December 30, 1980 .	5
Transcript Of Proceedings Of Suppression Hearing Held On December 30, 1980	6
Brief In Opposition To Defendant's Motion To Dismiss, filed January 19, 1981	19
Order Of Trial Court entered January 26, 1981	22
Notice Of Appeal filed February 19, 1981	23
Opinion Of Illinois Appellate Court, Third Judicial District, entered September 10, 1981 (*People v. Lafayette*, 99 Ill. App. 3d 830, 425 N.E. 2d 1383 (3d Dist. 1981))	25
Order Of Illinois Supreme Court Denying Leave To Appeal, entered February 2, 1981	31

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JOINT APPENDIX

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ITEM	DATE
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STATE OF ILLINOIS
IN THE
CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
KANKAKEE COUNTY

THE PEOPLE OF THE STATE OF ILLINOIS	)	
	)	No.
VS.	)	80-CF-248
RALPH LAFAYETTE	)	
Defendant	)	

BILL OF INDICTMENT

The Grand Jury charges:

That on September 1, 1980, in Kankakee County, State of Illinois, RALPH LAFAYETTE, Defendant, committed the offense of POSSESSION OF CONTROLLED SUBSTANCE in that said Defendant did knowingly and unlawfully have in his possession less than 200 grams of a substance containing amphetamines, a controlled substance, otherwise than as authorized in the Controlled Substances Act, in violation of Paragraph 1402(b), Chapter 56½, Illinois Revised Statutes.

A TRUE BILL

/s/ Signature Illegible
Foreman

STATE OF ILLINOIS
IN THE
CIRCUIT COURT OF TWELFTH JUDICIAL CIRCUIT
KANKAKEE COUNTY

No. ____, CIRCUIT COURT RECORD November 21, 1980.

COURT OPENED PURSUANT TO ADJOURNMENT:

PRESENT: PATRICK M. BURNS, JUDGE
L. PATRICK POWER, STATE'S ATTORNEY
WILLIAM SCROGGINS, SHERIFF
ROGER SERAFINI, CIRCUIT CLERK

Now on this date, case called. Case called. Defendant present in his own proper person and with his attorney Mr. Mark Steffen. People by Mr. William Herzog. Case called for arraignment. The defendant is presented a copy of an indictment charging him with the offense of Possession of a Controlled Substance. The defendant waives reading of the Bill of Indictment and explanation of rights, being duly arraigned pleads not guilty. Cause is ordered placed on the criminal jury calendar. Standard Order on Criminal Pre-trial motions is entered. Paragraph eight motions set for December 30, 1980 at 1:30 p.m. before the Honorable John F. Michela. For further details, see formal order signed and entered. Now comes the State and files their First Report in Compliance with Supreme Court Rule 412. Defendant acknowledges receipt of the same and also acknowledges receipt of the Grand Jury transcript. The defendant is advised that if he fails to appear that a trial may be held in his absence and that constitutes a waiver of his right to confront the witnesses against him. Defendant released on bond previously given.

COURT ADJOURNED TO November 24, 1980 AT 9:30 a.m.

STATE OF ILLINOIS
IN THE
CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
COUNTY OF KANKAKEE

PEOPLE OF THE STATE OF ILLINOIS	)	
	)	No.
vs.	)	80-CF-248
RALPH LAFAYETTE	)	

MOTION TO QUASH AND SUPPRESS EVIDENCE UNCONSTITUTIONALLY SEIZED

NOW COMES RALPH LAFAYETTE, hereinafter Defendant, and moves this Court to quash the search of his belongings and suppress the evidence seized, to wit: pills and in support thereof states:

1. On September 1, 1980 Defendant's purse was searched by police officers, and;

2. certain pills were seized from said purse;

3. said search was without consent, warrant or probable cause;

4. said search was made and said pills seized in violation of Defendant's rights under the Fourth Amendment of the Constitution of the United States and Section 6 and 10 of Article 2 [sic] of the Constitution of the State of Illinois.

Respectfully submitted,

/s/ MARK R. STEFFEN
Attorney for Defendant

Mark R. Steffen
258 E. Court Street
Suite 503
Kankakee, Ill. 60901
815-935-1211

STATE OF ILLINOIS
IN THE
CIRCUIT COURT OF TWELFTH JUDICIAL CIRCUIT
KANKAKEE COUNTY

No. _____, CIRCUIT COURT RECORD December 30, 1980.

COURT OPENED PURSUANT TO ADJOURNMENT:

PRESENT. JOHN F. MICHELA, JUDGE
L. PATRICK POWER, STATE'S ATTORNEY
WILLIAM SCROGGINS, SHERIFF
ROGER SERAFINI, CIRCUIT CLERK

Now on this date, case called. People by Ron Gerts, Assistant State's Attorney. Defendant present with Attorney Mark Steffen, Assistant Public Defender. Hearing called on pre-trial motions. Motion taken under advisement.

COURT ADJOURNED TO December 31, 1980 AT 9:30 a.m.

[5]

IN THE CIRCUIT COURT THEREOF:

STATE OF ILLINOIS)
) SS:
COUNTY OF KANKAKEE)

PEOPLE OF THE STATE OF ILLINOIS)
)
-vs-) No.
) 80-CF-248
RALPH LAFAYETTE,)
)
Defendant.)

BE IT REMEMBERED that on December 30, 1980 the above-entitled cause came on for hearing on a motion to suppress evidence before the Honorable John F. Michela, Circuit Judge, sitting in Kankakee County Circuit Court, Kankakee, Illinois.

APPEARANCES:

Mr. Ron Gerts,
on behalf of the People;

Mr. Mark Steffen,
on behalf of the Defendant.

[6]

THE COURT: 80-CF-248, People v. Ralph Lafayette.
MR. STEFFEN: Raise your right hand and be sworn.

RALPH LAFAYETTE,

called as a witness herein, having been first duly sworn, was examined upon oral interrogatories, and testified as follows:

DIRECT EXAMINATION

by Mr. Steffen:

Q Would you state your name.
A Ralph Lafayette.
Q And Mr. Lafayette, you are the Defendant in this case, 80-CF-258 [sic], and charged with possession of a controlled substance?
A Yes, I am.
Q That controlled substance being some kind of diet pill?
A Yes.
Q Mr. Lafayette, you were arrested, taken into police custody on September 1, 1980, approximately 10:00 p.m.?
A Yes, I was.
Q And you were at the Town Cinema then?
A Yes, I was.

[7]

Q Did you have some kind of a handbag in your possession then?
A Yes, I did.
Q Where was that handbag?
A It was strapped on my shoulder.
Q And were you arrested at the Town Cinema?
A Yes, I was.
Q And what happened after your arrest?
A I was taken to the City Jail, City Hall.
Q And is this the police officer sitting here that took you there?
A Yes, he is.
Q What happened at the police station?
A Well, like when I got there still had the bag on my shoulder. The officer told me to take everything out of my pocket. I did. He took the bag off of my shoulder. He did—he proceeded like—
Q He took the bag from your shoulder and he went through it?
A Yes.

Q Did he have a warrant for that bag?
A No, sir.
Q Did he ask you your consent to look into that bag?

[8]

A No, he did not.
Q Do you know of any reason for him to look in that bag?
A No, not that I could see of. That's like private, you know, therefore I feel as though, you know, he was going into something that was private without permission.
Q Did he take something from inside of that bag then?
A Yes, he did.
Q And what was that?
A Like pills and stuff wrapped in some foil, plastic or something like that.
Q And to the best of your recollection are those pills and plastic still in the possession of the police department?
A Yes, to my recollection it is.
MR STEFFEN: I have no further questions.

CROSS EXAMINATION

Q Mr. Lafayette, you stated you were arrested at the Town Cinema?
A Yes, I was.
Q And you were arrested for certain ordinance violations

[9]

there?
A You say certain what?
Q Ordinance violations.
A Such as, you know?
Q City ordinances like disturbing the peace?
A Oh, yes, I was.
Q So you were—then after the arrest you were taken by a police officer to the police station?

A Yes, I was.

Q And during the booking processes is when your bag was searched?

A Yes, it was.

Q In the past when you have been arrested you have been searched at booking, haven't you?

MR. STEFFEN: I object, your Honor.

MR. GERTS: The man stated he knows no reason why he was searched and I wish to ask the Defendant if he has been arrested and searched before,—

THE COURT: Searched his bag before that's the question.

MR. GERTS: I think my point is—

THE COURT: He's not complaining about pulling the stuff out of his pockets, throwing it on the counter, you always have to do that, you know.

MR. GERTS: The issue is whether in-custody search after

[10]

arrest the Defendant says he doesn't know why he was searched after arrested, show by his experience he does know [sic].

MR. STEFFEN: That would seem to be not relevant for the motion, some kind of impeachment. I don't think it is relevant or admissible.

THE COURT: The objection is sustained.

MR. GERTS: Okay, thank you, sir.

MR. STEFFEN: Thank you, does the Court have any questions?

THE COURT: Yeah. When you were arrested at the Town Cinema were you patted down?

A No, sir.

THE COURT: Officer Mietzner cuffed you, put you in the car?

A Yes, he did.

THE COURT: And where was your bag during this time?

A On my shoulder.

THE COURT: I see. Did he look in the bag before he put you in the car?

A No, sir.
THE COURT: You got down to the station, right?
A Yes, sir.
THE COURT: And then the—at the station they uncuffed you?

[11]

A Yes, sir.
THE COURT: Where was your bag?
A Still on my shoulder.
THE COURT: And you went over to the little booking area?
A I couldn't hear you.
THE COURT: You went over to the booking area?
A Yes, I did.
THE COURT: Who took the bag off of your shoulder and where did you go from there?
A The officer did. He took me back in the City Hall.
THE COURT: Yeah.
A Okay, officer told me to take everything out of my pocket which I did. And one officer grabbed me and one officer grabbed me, the other one took the bag which this officer did off of my shoulder and threw it on the counter.
THE COURT: Okay, that's all.
MR. STEFFEN: The Defendant would rest, your Honor.
MR. GERTS: Call Officer Mietzner.

MAURICE MIETZNER,

called as a witness herein, having been first duly sworn,

[12]

was examined upon oral interrogatories, and testified as follows:

DIRECT EXAMINATION

by Mr. Gerts:

Q State your name and your occupation, please.
A Sergeant Mietzner, work for the City of Kankakee, Kankakee, Illinois.

Q At—were you so employed on September 1 of this year?

A Yes, sir, I was.

Q Approximately 10:00 p.m. on September 1 of this year were you called to the Town Cinema?

A Yes, sir.

Q What happened there?

A The Manager of the theater called, said he had a few subjects in the theater causing a disturbance and he would like them removed.

Q And what did you do?

A I arrived at the theater and the subject at that time was out in the corridor and the Manager, they was having a few words and the Manager was—advised that he wanted to sign a complaint for disturbing the peace, disrupting the theater.

[13]

Q One of these people the Defendant, Ralph Lafayette?

A Yes, it is.

Q The man sitting here in the courtroom, he's already testified?

A Yes, sir.

Q Okay, when was your first contact with Ralph Lafayette?

A Inside the theater.

Q And what did you do the first time you saw him?

A Well, I tried to get it straightened out there in the theater and he kept on yelling and screaming inside the theater so I advised him that he was under arrest for disturbing the peace.

Q And at that time did he have a shoulder bag?

A Yes, sir, he did.

Q Okay, after you arrested him what did you do?

A Handcuffed him, put him in the squad car and took him to the station.

Q What did you do at the station?

A Took him to the booking room where he was advised to take everything out of his pockets and put them on the counter which he did and he took his shoulder bag which was still on his shoulder—

[14]

Q Was he still in cuffs at this time?
A No, sir.
Q He had been uncuffed?
A Yes, sir.
Q This was prior to the time that he started emptying his pockets. Did the cuffs come off before he started emptying his pockets?
A Yes, sir.
Q Please continue.
A Then he had a—he had a shoulder bag and he had a partial pack of cigarettes inside of it which he took out. He laid the bag up on the counter and when he did I patted the bag. I still felt there was something else in the bag. Then I looked inside the bag and found, I believe, ten pills inside the bag which was in the wrapping of a cigarette case package.
Q Was it in the plastic wrap of a cigarette package?
A Yes, sir.
Q And is it those pills that have led to this charge of possession of controlled substance?
A Yes, sir, they was tested by Detective Furrow to be amphetamines.
Q Valtox tested?
A Yes, sir.

[15]

Q Is there anything else—is there anything else that happened prior to discovery of these pills?
A No, sir, just that they was found during the booking procedure.
Q Is a search at the time of booking a normal police procedure?
A Yes, sir, it is.
Q MR. GERTS: Thank you very much, Officer.

CROSS EXAMINATION

by Mr. Steffen:

Q Officer Mietzner, when you first saw the Defendant he was out in the corridor, what they call the lobby?

A Yes, sir.
Q That's where they have refreshments and things like that?
A Yes, sir.
Q And are you aware that the Defendant was found not guilty on that ordinance violation?
MR. GERTS: Objection, it is irrelevant.
THE COURT: Sustained.
MR. STEFFEN: Q You had conversation with the Defendant for sometime at the Town Cinema, is that correct?
A Yes, sir.

[16]

Q Then when he was, I suppose, professing his innocence it wasn't me that was doing it you got the wrong guy I came to see the show, is that correct?
A He was yelling and screaming out there.
Q There were other people also outside?
A Yes, sir, Mr. Eugene Bell was also arrested at the time.
Q Were there others also arrested?
A Just them two.
Q You transported the Defendant to—did you transport anyone else?
A Just the Defendant.
Q Was there anyone else in your vehicle?
A No, sir.
Q You escorted the Defendant into the police station?
A Yes, sir, I did.
Q Is that when you removed the cuffs after you exited the vehicle and went into the police station?
A I took them off in the booking room.
Q Then did he start filling out forms and things in the booking room?
A He did, yes, sir.
Q Then you asked him to take the stuff out of his

[17]

pockets?

A Yes, sir.
Q Which he did?
A Yes, sir.
Q Then you took the purse off of his arm and put it on the table?
A No, sir, he took the purse off of his arm, took a package of cigarettes out of it. He laid the purse and the cigarettes on the counter at which time I patted the purse
Q When he took the purse off of his shoulder was that upon your request to take this off?
A I advised him to take everything off and put it on the counter.
Q He put the purse on the counter upon your request?
A Yes, sir.
Q You didn't get his permission to look in it, did you, in the purse?
A No, sir, but after he took out the pack of cigarettes he laid it up and I patted the outside. I felt something still inside the purse itself.
Q You felt these pills in a plastic wrapper?
A Yes, sir.
Q The cigarettes the Defendant took out do you remember what brand they were?

[18]

A No, sir, not offhand.
Q Could they have been Virginia Slims?
A I don't believe so.
Q Do you still have the wrapper that the cigarettes or that the pills were wrapped in.
A Yes, sir, it is still in evidence with the pills.
Q Do you still have the purse?
A No, sir, it's been turned back over to Mr. Lafayette.
Q These pills that were tested out are they what are known as diet pills?
A No, sir, to me it was black beauties.
Q Small little black or dark brown pills?
A Yes, sir.
Q You were not in fear of your safety when you arrested the Defendant, were you?

A No, sir.
Q And you didn't pat down that person expecting to find a gun when you were in the purse you didn't expect to find a gun, did you?
A No, sir.
Q Did you expect to find drugs when you went inside the purse?

[19]

A No, sir, I didn't know what was inside of the purse.
Q You were looking in for your own curiosity?
A Yes, sir, everything has got to be inventoried.
Q You have inventory bags and evidence bags at the police station?
A Yes, sir, we do.
Q Do you have a bag large enough to put the purse in?
A There was a small purse there.
Q So the purse you would have had a bag large enough to put the bag in?
A Yes, sir.
Q You could have put the purse in a bag and sealed it up, is that correct?
A Yes, sir.
Q And the Defendant was right there in front of you when you did all of this, when you looked in the purse and everything, the Defendant was standing right there?
A Yes, sir, he was.
Q You have also a locker at the police station that you can lock evidence in?
A Yes, sir.
Q Or lock the Defendant's personal belongings in?

[20]

A Yes, sir.
MR. STEFFEN: I have no further questions.
THE COURT: Mr. Gerts?

REDIRECT EXAMINATION

by Mr. Gerts:

Q Why did you ask the Defendant to empty his pockets and later why did you go into the bag?

MR. STEFFEN: I object, your Honor, it is beyond the scope of cross examination. It should have been on direct examination.

MR. GERTS: No, it is not. What was on your mind concerning the mental state of the officer.

THE COURT: Objection is overruled. You can answer the question.

A Repeat that, please.

MR. GERTS: Q Why did you ask Ralph Lafayette to empty his pockets and why did you go in the purse?

A Like I stated it is standard procedure for anybody being brought in for booking.

Q After an arrest?

A Yes, sir.

Q And was anything that you did with Ralph Lafayette you testified to outside the normal police procedure?

[21]

A No, sir, it is not.

MR. GERTS: Thank you.

MR. STEFFEN: I have no further questions.

THE COURT: Was Lafayette put in jail?

A Yes, sir, he was.

THE COURT: Or did he post bond? He didn't post a bond, he went to his cell?

A There was no bond, controlled substance.

THE COURT: No, I mean when you had him in there to book him on the ordinance violation was he going to sit in the jail cell or was he going to post bond?

A He was getting undressed and going into his cell, yes, sir.

THE COURT: Okay, when you arrest a woman do you search her purse?

A Yes, sir, I do.

THE COURT: Okay, thank you. That's all.

MR. GERTS: That's all the evidence I have.

MR. STEFFEN: Your Honor, I think that this clearly falls under the decision of People vs. Bayles reported in the Appellate decisions.

THE COURT: That's a very recent case. Did you read the whole case?

[22]

MR. STEFFEN: Yes, your Honor.

76 Illinois Appellate Third 843 was the Appellate Decision. The Official Reports I was able to find it today, have the Supreme Court Decision on the case and I believe it is clear that if this was in fact an inventory search, that inventory searches aren't per se reasonable and that in the Bayles case there was a suitcase that was—had some expectation of privacy. That the decision of both the Appellate and the Supreme Court was there was no reason why the police officer couldn't have taped it up and secured it and if he needed a warrant—

THE COURT: It was already secured because the guy was laying upside down in the car after his girlfriend had been killed. He told the passerby to watch the suitcase. The Sheriff said to the Deputy inventory everything and the Deputy opened the suitcase. Take all of that, found all of the money in the shaving kit and everybody knows if there's money in the shaving kit you got to be selling drugs.

MR. STEFFEN: The Bayles case—

THE COURT: I got that. You didn't get that off of my desk, did you?

MR. STEFFEN: No.

THE COURT: That's my copy on the desk.

MR. STEFFEN: Have an analogous purse, could have been put

[23]

in an evidence bag, secured while the Defendant was there, stuck into an evidence locker for him to pick up

later. It wasn't something that he was going to—there was no danger—well, the three reasons for the inventory search being the protection of the officer, for his safety and then the protection of the items might be valuable or claims against the Sheriff or the officer of stealing items and it could have been easily handled by just securing the bag, putting it into an evidence bag and locking it up and I think that the—although it may be their procedure, the Court in Bayles said that regardless of even if it is a standard procedure that they use, it is not reasonable and it is a violation of the Defendant's constitutional right to enter into bags and to look into personal luggage without a warrant or exigent or correct circumstances for search.

THE COURT: Have you seen the Bayles case, Gerts?

MR. GERTS: No, this is my first time.

THE COURT: I will give you a chance to read it. It is an interesting case.

MR. GERTS: I might ask that the Court when he looks at it it either lines up with Bayles or it doesn't. Bayles was an in-custody search, person was about to be placed in a jail cell and property taken from him, it falls within Bayles. If that is not the fact of the Bayles, then Bayles doesn't

[24]

cover the case. I think the question is is there an alternative way to handle that bag because there is an-infinite ways of handling small packages. The question is is there a constitutional bar to looking into that bag.

THE COURT: I will take the matter under advisement. I am sure there is a purse case within the State of Illinois.

MR. STEFFEN: I don't see a specific purse case.

THE COURT: Okay.

MR. STEFFEN: Thank you, your Honor.

THE COURT: You are welcome

(WHICH IS ALL OF THE PROCEEDINGS HAD IN SAID CAUSE ON THIS DATE.)

(Official Court Reporter's certificate omitted in printing)

IN THE
CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN THE
COUNTY OF KANKAKEE
AND
STATE OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS	)	
	)	Case No.
vs.	)	80-CF-248
	)	
RALPH LAFAYETTE,	)	
	)	
Defendant.	)	

BRIEF IN OPPOSITION TO DEFENDANT'S MOTION TO SUPPRESS

Facts:

Defendant Ralph Lafayette was arrested in a Kankakee movie theatre, transported to the Kankakee Police Station, and searched at the station prior to being put in a holding cell. During booking, personal belongings were seized, among them, a shoulder bag containing pills alleged to be controlled substances.

Argument:

The arrest of defendant was lawful. That was not an issue at the hearing on motion to suppress. The inventory of defendant's personal belongings including the shoulder bag occurred after the arrest. The inventory of the shoulder bag was part of a search of defendant's person. The bag contained such personal articles as cigarettes. It was not luggage nor was it a briefcase. It had no lock. It was partially open. It was carried by the defendant as a matter of personal style to carry those articles that other men may put in their pockets or that women may put in a purse used for the same purpose as

defendant's shoulder bag. This was not a search of luggage, a briefcase, or a footlocker, but a search of defendant's person which extended to all of his personal belongings which he had on him at the time.

Illinois statute permits a search of the person pursuant to a lawful arrest. Section 108-1 of Chapter 38 of Illinois Revised Statutes. This search may be a "full search of the person." *People v. Jones*, 56 Ill. App. 3d 414, 371 N.E. 2d 1094, 1096 (1st Dist. 1977). *U.S. v. Robinson*, 414 U.S. 218, 38 L. Ed. 2d 427 (1973).

A search pursuant to a lawful arrest allows the police to inventory the defendant's belongings. *People v. Clark*, 65 Ill. 2d 169 (1976) (the belongings were an automobile). Our Supreme Court stated in the *Clark* case that the purposes of this inventory were, among other things, to protect the police against claims of lost or stolen property, and for the protection of the defendant's property. These purposes have also been recognized by the federal courts. *U.S. v. Keleher*, 470 F. 2d 176, 178 (5th Cir. 1972). *South Dakota v. Opperman*, 428 U.S. 364, 49 L. Ed. 2d 1000 (1976).

With regard to the search of containers, *Opperman* quotes *Keleher* with approval:

> "When the police take custody of any sort of container (such as) an automobile . . . it is reasonable to search the container to itemize the property to be held by the police. (This reflects) the underlying principle that the fourth amendment proscribes only unreasonable searches." *Opperman*, 49 L. Ed. 2d at 1006.

The Illinois Constitution has been interpreted to follow the protection provided by the Fourth Amendment to the United States Constitution and give no further protection against unreasonable search and seizure. *People v. Clark*, 65 Ill. 2d 169, 175 (1976).

On the facts of the instant case, Officer Mietzner looked into a container, a shoulder bag, on the person of the defendant after he was arrested. This was a part of

a search of the person of the defendant immediately prior to his being put in a jail cell. The issue is not whether something else could have been done with the bag, but rather whether Officer Mietzner's actions were proscribed by the constitutions and statutes.

This inventory of defendant's bag is justified as a search of his person and a search of his personal belongings on his body at the time. The policies allowing police to inventory defendant's belongings at the time of his arrest to protect both the defendant and protect the police against false claims of loss or theft of property while in police custody support Officer Mietzner's actions.

PEOPLE OF THE STATE OF ILLINOIS
BY L. PATRICK POWER, STATE'S ATTORNEY

BY /s/ RONALD J. GERTS
Assistant State's Attorney

STATE OF ILLINOIS
IN THE
CIRCUIT COURT OF TWELFTH JUDICIAL CIRCUIT
KANKAKEE COUNTY

No. _____, CIRCUIT COURT RECORD January 26, 1981.

COURT OPENED PURSUANT TO ADJOURNMENT:

PRESENT: JOHN F. MICHELA, JUDGE
L. PATRICK POWER, STATE'S ATTORNEY
WILLIAM SCROGGINS, SHERIFF
ROGER SERAFINI, CIRCUIT CLERK

Now on this date, case called. Case called for decision on Motion to Suppress Evidence. Motion is allowed. Evidence is suppressed. Clerk to notify Mr. Steffen and State's Attorney.

COURT ADJOURNED TO January 27, 1981 AT 9:30 a.m.

IN THE
CIRCUIT COURT OF KANKAKEE COUNTY, ILLINOIS
APPEAL TO THE APPELLATE COURT OF ILLINOIS,
TWELFTH [sic] DISTRICT

PEOPLE OF THE STATE OF ILLINOIS	)	
	)	Gen. No.
vs.	)	80-CF-248
	)	
RALPH LAFAYETTE	)	
Defendant-Appellee	)	

NOTICE OF APPEAL

Name and address of Appellant: People of the State of Illinois.

Name and address of Appellant's Attorney: L. Patrick Power, State's Attorney, Kankakee County, Courthouse, Kankakee, Ill. 60901.

The offense with which Appellee is charged is: Possession of Controlled Substance which he is alleged to have committed as follows: that he illegally possessed less than 200 grams of Amphetamines on September 1, 1980.

The judgment or order of the Circuit Court, from which this appeal is taken, was entered on: January 26, 1981, and was as follows: allowing Defendant's Motion to Quash and Suppress Evidence Unconstitutionally Seized and also imposed the following sentence: none.

Appellee is presently confined at: not confined.

Appellant hereby appeals to the: Appellate Court of Illinois, THIRD District, from the Judgment or order of the Circuit Court of KANKAKEE County, Illinois, entered in said cause on: January 26, 1981 as aforesaid.

Dated: February 20, 1981.

People of the State of Illinois
Appellant.

/s/ L. PATRICK POWER
Attorney for Appellant.

Clerk of the Circuit Court of
Kankakee County, Illinois.

(Statute provides Notice to be filed in duplicate.)

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT
A.D., 1981

PEOPLE OF THE STATE OF ILLINOIS,	) Appeal from the) Circuit Court) of the Twelfth
Plaintiff-Appellant,	) Judicial Circuit) Kankakee County,
vs	) Illinois
RALPH LAFAYETTE,	) Honorable) John F. Michela
Defendant-Appellee.	) *Presiding Judge*

Mr. JUSTICE HEIPLE delivered the opinion of the court.

The State appeals from the order of the Circuit Court of Kankakee County which suppressed evidence seized. The issue presented is whether a warrantless search of the defendant's (Ralph LaFayette) shoulder bag, made during booking procedures following a valid custodial arrest, was unreasonable and, thus violated the defendant's fourth and fourteenth amendment rights.

The defendant had been charged with possession of a controlled substance in violation of section 1402(b) of the Controlled Substances Act. (Ill. Rev. Stat. 1979, ch. 56½, par. 1402(b).) Prior to trial, he moved to suppress ten amphetamine pills found in his purse-like shoulder bag subsequent to his arrest for disturbing the peace. The testimony adduced at the suppression hearing established the following facts:

On September 1, 1980, at approximately 10 p.m., Officer Maurice Mietzner responded to a call about a disturbance at the Town Cinema in Kankakee. When Mietzner

arrived, the defendant was arguing with the theater manager. The manager said he wanted to sign a complaint against the defendant for disturbing the peace. According to Mietzner, the defendant continued to yell and scream in the theater, so the officer arrested him for disturbance of the peace. Although the defendant wore a shoulder bag, Mietzner did not remove it. Nor did he "pat down" the defendant for weapons or contraband. Instead, Mietzner handcuffed the defendant and transported him by car to the police station.

In the booking room, the handcuffs were released, and the defendant was ordered to remove any items from his pockets and place them on the counter. The defendant did as ordered. According to Mietzner's testimony, the defendant then reached into his shoulder bag, withdrew a package of cigarettes, and placed the bag on the counter where it was searched. The defendant testified that the police removed the bag from his shoulder and searched it. After "patting down" the bag, Mietzner looked inside a cigarette case package and found ten pills later identified as containing amphetamines. Mietzner stated he was not in fear for his safety when he made the arrest, nor did he expect to find a gun or drugs upon searching the shoulder bag. He searched the bag because "everything" had to inventoried, according to standard police procedure. Mietzner also admitted the defendant's shoulder bag was small enough to be placed and sealed in a larger bag or box for protective purposes.

At the close of the hearing, the prosecution argued the seizure was made incident to a valid inventory search. After taking the matter under advisement, the circuit court summarily suppressed the evidence seized. On appeal, the State advances two grounds for justifying the warrantless search of the shoulder bag at the stationhouse following the defendant's arrest: the search was incident to a lawful custodial arrest, and the search constituted a valid inventorying of the defendant's personal effects upon his arrest. Neither party disputes the lawfulness of the defendant's custodial arrest for disturbance of the peace.

With respect to the State's first argument, that the warrantless search was reasonable because it was incident to a valid custodial arrest, we find the State has waived this argument for the purposes of appeal by failing to raise it at the suppression hearing. (See, *People v. Fuentes* (3rd Dist., 1980), 91 Ill. App. 3d 71, 414 N.E.2d 876.) Moreover, even assuming, *arguendo*, that the State has not waived this argument, the stationhouse search of the shoulder bag did not constitute a valid search incident to a lawful arrest.

A search incident to arrest, if lawful at the time of the arrest, may be conducted later when the accused arrives at the place of detention. (*United States v. Edwards* (1974), 415 U.S. 800, 94 S. Ct. 1234, 39 L. Ed. 2d 771.) However, the Supreme Court in *United States v. Chadwick* (1977), 433 U.S. 1, 97 S. Ct. 2476, 53 L. Ed. 2d 538, appeared to have limited the option of postponing a search incident to arrest by sanctioning only delayed searches of the accused and his clothing. In *Chadwick*, the Court faced the issue of whether a search of a locked footlocker found adjacent to the lawfully arrested defendants could be searched later at the stationhouse without a warrant. The Court rejected the government's argument that the *Edwards* rule applied equally to items within the accused's possession and declared that "warrantless searches of luggage or other properties seized at the time of the arrest cannot be justified as incident to that arrest either if the 'search is remote in time or place from the arrest' (*Preston v. United States* (1964), 376 U.S. 364, 367, 84 S. Ct. 881, 884, 11 L. Ed. 2d 777, 780), or no exigency exists." (*United States v. Chadwick* (1977), 433 U.S. 1, 15, 97 S. Ct. 2476, 2485, 53 L. Ed. 2d 538, 550-51.) The justification for the distinction announced in *Chadwick* is that, unlike an accused's person who suffers a substantial diminution in his expectations of privacy once placed under arrest (see, *United States v. Robinson* (1973), 414 U.S. 218, 94 S. Ct. 467, 38 L. Ed. 2d 427), possessions within the immediate control of the accused retain their expectations of privacy after arrest. Further, once the officers gain exclusive control of the luggage or personal property not immediately associated with the arrestee,

there is no danger that the arrestee might gain access to the property to destroy evidence or to become armed. As Chief Justice Burger and Justice Powell indicated in their concurring opinion in *Arkansas v. Sanders* (1979), 442 U.S. 753, 99 S. Ct. 2586, 61 L. ed. 2d 235, the *Chadwick* rule applies equally to closed containers carried in the hand of the accused. Subsequent case law has demonstrated that the *Chadwick* rule does not depend on whether the container is locked, but whether, judging from the totality of the circumstances, the accused has a reasonable expectation of privacy. See, e.g., *Arkansas v. Sanders*, (1979), 442 U.S. 753, 99 S. Ct. 2586, 61 L. Ed. 2d 235 (unlocked suitcase); *Robbins v. California* (1981), ... U.S. ....., 101 S. Ct. 2841, 69 L. Ed. 2d 744 (closed opaque plastic bag); *United States v. Rigales* (5th Cir. 1980), 630 F. 2d 364 (closed backpack); and *United States v. Berry* (7th Cir. 1977), 560 F. 2d 861 (unlocked briefcase).

In applying these principles to the facts presented here, we find the postponed warrantless search of the defendant's shoulder bag to be unreasonable because the purse-like shoulder bag does carry an expectation of privacy independent of that of the arrestee's body and clothing. Although we recognize several jurisdictions have held otherwise (see, *United States v. Moreno* (9th Cir. 1978), 569 F.2d 1049; *Sumlin v. State* (1979), ... Ark. ....., 587 S.W.2d 571; *Dawson v. State* (1978), 40 Md.App. 640, 395 A.2d 160; *State v. Horton* (1979), 44 N.C. App. 343, 260 S.E.2d 780), we agree with *People v. Redmond* (1st Dist., 1979), 73 Ill. App. 3d 160, 390 N.E.2d 1364, which declared a warrantless search of the defendant's purse following his arrest to be unreasonable. After the accused has been secured, as in the case at bar, and the officer has no fear that the purse is a refuge for a weapon or other contraband, the contents of a closed purse, which are generally of a personal nature and subject to expectations of privacy, may not be searched and seized without exigent circumstances or warrant. Accordingly, because the shoulder bag was in the officer's exclusive possession and because no exigent circumstances existed, the search was not incident to the defendant's arrest.

The State also argues the warrantless search of the defendant's shoulder bag constituted a valid inventorying of its contents according to *South Dakota v. Opperman* (1976), 428 U.S. 364, 96 S. Ct. 3092, 49 L. Ed. 2d 1000. In *Opperman* the Court upheld the inventory search of the contents of an unlocked glove compartment in a lawfully impounded vehicle. Such an intrusion into the vehicle was deemed reasonable because it furthered three legitimate objectives: protection of the owner's property; protection of the police against claims of lost or stolen property; and protection of the police from potentially dangerous contraband. The reasonableness of the inventory search has not been considered by the Supreme Court outside of the circumstances found in *Opperman*. However, the Illinois Supreme Court in *People v. Bayles* (1980), 82 Ill. 2d 128, 411 N.E.2d 1346, refused to countenance an inventory search of an unlocked suitcase found in the defendant's possession at the time of his arrest and limited the *Opperman* holding to inventory searches of lawfully impounded vehicles. The *Bayles* court, after examining the legitimate objectives for upholding inventory searches offered in *Opperman* in light of the considerably greater privacy interests found in closed personal containers than in vehicles (see, *United States v. Chadwick* (1977), 433 U.S. 1, 97 S. Ct. 2476, 53 L. Ed. 2d 538), declared inventorying the contents of a suitcase found in a lawfully impounded vehicle to be, in the absence of exigent circumstances, unreasonable and a violation of the fourth amendment.

Clearly, the instant circumstances presented here, are closer to *Bayles* than to *Opperman*. As we have previously said, the contents of the defendant's purse-like shoulder bag are vested with the same substantial privacy interests as are the contents of a locked trunk (*Chadwick*), an unlocked suitcase (*Sanders*), or a briefcase (*Bayles*). In considering the reasonableness of an inventory search, this substantial privacy interest must be balanced against the three objectives stated in *Opperman*. First we see no possibility of potential harm presented by the defendant's purse, for, as contended by Officer Mietzner, he had no fear for his safety at the time of

the search. The two other objectives, preservation of the defendant's property and protection of police from claims of lost or stolen property, "could have been achieved in a less intrusive manner." (*People v. Bayles* (1980), 82 Ill. 2d 128, 143, 411 N.E.2d 1346, 1353.) For example, as Officer Mietzner testified, the defendant's shoulder bag could easily have been secured by sealing it within a plastic bag or box and placing it in a secured locker.

Therefore, the postponed warrantless search of the defendant's shoulder bag was neither incident to his lawful arrest nor a valid inventory of his belongings, and thus, violated the fourth amendment.

Accordingly, we affirm the suppression order entered in the Circuit Court of Kankakee County.

Affirmed.

SCOTT, P.J. and ALLOY, J., concur.

[LETTERHEAD OF THE
ILLINOIS SUPREME COURT]

Robert H. Gillespy
Clerk

February 2, 1982

Hon. Tyrone C. Fahner
Attorney General
Criminal Justice Division
188 W. Randolph St.
Chicago, Ill. 60601

No. 55762—People State of Illinois, petitioner, vs. Ralph Lafayette, respondent. Leave to appeal, Appellate Court, Third District.

You are hereby notified that the Supreme Court today denied the petition for leave to appeal in the above entitled cause.

Very truly yours,
/s/ ROBERT H. GILLESPY
Clerk of the Supreme Court